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ABSTRACT

Law enforcement today is under intense and increasing public pressure regarding allegations of wrongdoing such as wiretapping, illegal entry, and unlawful surveillance. Meanwhile, law enforcement must continue its main task of investigation and prosecution of criminal offenses in which the prosecutor plays a key role. In many communities the prosecutor's job remains a political office or a part-time occupation, and the costs of these shortcomings are high. Some recommendations for upgrading prosecutorial performance include additional continuing education programs and frequent and periodic reviews of our criminal codes to keep them in step with the times. New legislative tools for prosecutors also need to be sought, and the problem of financial resources to support prosecutive operations is a major one. Changes in the public's perception of the true nature of these problems and adjustments in the criminal justice process will enhance productivity. However, in the final analysis, the real opportunity to improve the criminal justice process exists in how prosecutors perform their duties at the local level. Prosecutors must never hesitate to follow the evidence where it leads, and there must be absolute regard for the guarantees of the Bill of Rights. (EA)

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Department of Justice

REMARKS

OF

RICHARD L. THORNBURGH
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
U. S. DEPARTMENT OF JUSTICE

TO THE

GRADUATING CLASS
CAREER PROSECUTOR COURSE

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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NATIONAL COLLEGE OF DISTRICT ATTORNEYS
BATES COLLEGE OF LAW
UNIVERSITY OF HOUSTON
HOUSTON, TEXAS

FRIDAY, JULY 25, 1975

2:30 P.M. CENTRAL

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As one who for the past six years has been directly involved in the prosecution of Federal criminal cases as a United States Attorney, I am particularly pleased to have the opportunity to address this graduating class of fellow advocates today. My congratulations to you for seizing this opportunity to sharpen and develop both your professional and managerial skills by participation in this program.

All of us in law enforcement today are under intense and increasing pressure from a skeptical public. Particularly in the Nation's Capitol, charges and countercharges concerning alleged abuses within the criminal justice and intelligence communities have tended to focus public attention more upon derelections than upon the day-in, day-out work that is being performed well.

Lest I be misunderstood, let me state clearly and without equivocation that these allegations of wrongdoing are indeed serious concerns. No one has a greater stake in the integrity of the criminal justice process than law enforcement officers themselves, for upon the public's favorable assessment of our efforts depends the nature and degree of much-needed support which we may call upon when so frequently needed.

The outcome of these pending investigations into allegations of wrongdoing -- wiretapping, bugging, illegal entry, unlawful surveillance, etc. -- must await the completion of careful, deliberate and thorough investigations -- the gathering and evaluation of all the evidence available. I can assure you that effort is going forward within the Department of Justice.

In the meantime, however, all of us in law enforcement must continue in our main task -- the investigation and prosecution of criminal offenses within the fifty states. At this time it is well that we reaffirm what course of conduct can best assure a skeptical public about our capability to carry out the mandate we have to provide safer streets and safer communities for all Americans.

Let me state it simply. There is no substitute for a firm and aggressive law enforcement effort, carried out by dedicated professionals who adhere only to highest standards of conduct and who are committed to the absolute observance of the constitutional rights and civil liberties of all our citizens. This is the only modus operandi to move this nation effectively toward the President's stated goal of greater domestic tranquility.

In such a law enforcement effort, the prosecutor plays a key role.

The prosecutor is a professional -- a practicing lawyer with the public for his client. He more often than not stands at important crossroads in the process of law enforcement. As initiator of criminal investigations, as counsellor to those conducting criminal inquiries, in

the exercise of discretion as to whether or not and whom to prosecute, and as a courtroom advocate, the professional prosecutor, to a great extent, controls the quality and quantity of effective law enforcement in our nation.

We have not always been able to do this job well. Even today, in many communities the prosecutor's job remains a part-time occupation -- in some areas as merely another political office to be filled on a lengthy ballot. Indeed, according to the 1973 report of the National Advisory Commission on Criminal Justice Goals and Standards, "most of the Nation's 2,700 prosecutors serve in small offices and have only one or two Assistants." Police and other criminal investigators who are denied round-the-clock access to such "spare time" prosecutors must often forego much-needed legal advice in the conduct of investigations, the preparation of search warrant applications and other legal documents, the proper handling of evidence, and the like.

In altogether too many metropolitan trial courts, busy prosecutors are literally "handed the file" at the threshold of the courtroom moments before trial. And the sheer volume of criminal case loads in these busy courts causes immense pressure to accede to sometimes unwholesome plea bargaining practices.

The costs of these shortcomings are high. Part-time prosecutors offices are hard-pressed to develop and maintain high standards of professional conduct. They frequently lack the time and continuity

necessary to develop effective programs for positive law enforcement efforts and too often merely respond, ad hoc, to matters which events have thrust upon them. Police officers who are obliged to "go it alone" in making essentially legal judgments in the course of criminal investigations can see the fruits of an otherwise careful and thorough investigation of major crime go down the drain because all the "i"s weren't dotted and all the "t"s weren't crossed. And violators brought to trial in pressure-cooker courtroom environments may escape conviction or appropriate punishment because ill-prepared and harried prosecutors are unable to "get a grip" on the cases they must try.

Remedies for these shortcomings are at hand, but we sometimes are drowned out in expressing them by the sweeping responses of others to the general public lament over rising crime rates. Thus, "nuts and bolts" programs to upgrade prosecutorial performance are often overshadowed by those who suggest there are simple answers to all of America's crime problems. The real solutions, as we know, are far less dramatic.

Near the top of the list, needless to say, are continuing education programs such as you have just successfully completed today. Beyond just acquainting you with the present "state of the art" in prosecutorial efforts, programs such as these are important for the contact and interchange they provide with fellow practitioners. It is of no little

importance to recognize that most of you share common problems and that, in the words of Tin Pan Alley, "You'll Never Walk Alone" in seeking their solutions.

But other important steps can be taken. Refurbishing of our criminal laws and procedures from time to time is an absolute "must" for effective prosecution and public confidence alike. For example, it was only within the last year or so that the legislature of my native state of Pennsylvania saw fit to repeal a statute making it a criminal offense to "defile an ice pond" which was put on the books in pre-refrigeration days and, no doubt, at one time reflected a valid public concern. In a more serious vein, however, frequent and periodic review of our criminal codes to keep them in step with the times is often neglected and instead more laws and offenses are piled on to meet newly perceived needs.

A good start might be made in recognizing that many offenses related to drug and alcohol abuse are not only criminal in nature, but have a socio-medical aspect as well. Similarly, public perceptions about so-called "victimless" crimes should be more frequently and thoroughly plumbed. Yesterday's mores should not be perpetuated by sheer momentum, and thereby add another cause to rising crime. These questions are complex political, social, even cultural ones, but require examination if we are to legitimately relieve pressures on police, prosecutors and the courts.

We can also remove or downgrade many "nickel-dime" offenses which now clog our criminal processes by their command of the full panoply of procedural steps within the criminal justice system. By doing so, valuable court time can be freed to concentrate on speedy and just disposition of major felony cases -- the focal point of most serious public concern.

New legislative tools for prosecutors should be sought as well. Invaluable in the pursuit of major "white collar" offenses, organized crime and official corruption are the facilities of investigative grand juries, court-authorized wiretapping and so-called "immunity" statutes which can be used to compel unwilling witnesses to testify against major violators. Yet many jurisdictions today either deny these weapons to prosecutors or so circumscribe their use as to make them virtually non-productive.

Of course, the problem of financial resources to support the prosecutor's undertakings is a major one. And we must face it head on. We must seek public acceptance of the fact that "penny wise" may indeed be "pound foolish" in the funding of prosecutive operations. Resources devoted to maintaining an adequate number of full-time prosecutors, able to work "hand-in-glove" with police and other investigators in complicated cases, and to adequately prepare and try major criminal offenses in our courts are not just luxuries nor "featherbedding" programs for unemployed lawyers, as sometimes suggested, but are of near absolute necessity if sound law enforcement strategies are to be devised and implemented. We

should never hesitate to speak out on this score.

Perhaps, when we catalogue these needs, it becomes a bit discouraging. But recognize that, if we are to meet our responsibilities, it must not be in a piecemeal manner, but with comprehensive plans to spread before the public.

Crime and the problems of the criminal justice system are complex. They are complex because they deal with that most complex of mechanisms -- human nature. It is the shortcomings of all of us -- as individuals and as a society -- which produce the breeding grounds of criminal activity in the first place. And while the criminal justice system cannot even begin to reach or cope with all of the ills which produce much of today's unrest, we are looked to as the "point of the lance" in the effort to contain the criminal activity which such unrest invariably spawns.

This challenge is one from which we need not shrink. We can press for changes in the public's perception of the true nature of our problems. We can seek those fine-tuning adjustments in the criminal justice process which will enhance our productivity. We can respond with precision and integrity to these demands.

In the final analysis, we recognize that the true nature of our response comes back to the day-to-day performance of the prosecutor in meeting the demands of his office. It is here that the real opportunity to improve the criminal justice process exists. It is here that the public will ultimately judge whether our efforts are worthy of their

continued confidence and support.

Our guideposts are clear at the operating level. Let me try to state then from my own perspective.

As prosecutors, we can never hesitate to follow the evidence where it leads -- regardless of whom it may point to, their power or influence, their politics or their station in life -- if we are to achieve that "Equal justice under law" emblazoned on the facade of the Supreme Court of the United States.

Similarly, as prosecutors, we must never seek to carry investigations and prosecutions beyond where the evidence may lead, for reasons personal to us or for prospects of political, economic or other advancement.

These "two sides of the same coin" are the essence of the professional prosecutor's charge.

We must proceed, and counsel others to proceed -- and it bears repeating -- with absolute regard for the guarantees of our Bill of Rights, mindful of the heavy burden upon us to be fair, but also in full recognition that "corner cutting" when it comes to civil rights and civil liberties will ultimately prove counter-productive.

We must also candidly and forcefully share our views on law enforcement matters with the public and with our counterparts in the criminal justice system -- police, courts and correctional officials as well as legislative leaders -- so that the prosecutor's unique vantage point can be factored into their judgments.

Finally, we must stifle the impulse to lash out at the courts when we feel wronged, recognizing the unique vulnerability of this institution

to irresponsible attack and our dependence in the long run on the public's support of our entire system for resolving controversy.

Heavy demands are placed on prosecutors. But we all chose the prosecutor's role knowing of the risks, as well as the opportunities, which this form of public service presents. Few of us, I am sure would re-think that choice today despite its "slings and arrows of [sometimes] outrageous fortune."

One final observation, if I may. I referred at the outset to public concern over revelations about excesses and law-breaking within various law enforcement and intelligence gathering operations. These are, to be sure, troublesome to us all. They will be dealt with, as I indicated, in a dispassionate and professional manner by all of us in positions of responsibility who are called upon to puzzle them through.

I am concerned, however, that the proper quest for a full airing of these matters does not preclude giving attention to all of our other important work. This nation continues to rely upon its criminal justice system for a sound and aggressive response to wrongdoing and as an antidote to the depredations visited upon its citizens by all forms of unlawful activity.

This is our primary function -- to serve and protect, as best we can, the American public. As you leave this institution and return to your communities to take up anew this important task, do so with every confidence that you are about some of the most important work any society can demand or expect.

As prosecutors, your responsibilities are sweeping. But so are your opportunities. A sound performance in meeting and fulfilling them will be your greatest reward.

Thank you.